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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

VINCENT KHOURY TYLOR, Plaintiff, vs. CRUISE.COM, INC., a Delaware Corporation, dba CRUISE.COM; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; and DOE ASSOCIATIONS 1-10, Defendants.	CIVIL NO. 15-00203 KSC (Copyright Infringement) DEFENDANT CRUISE.COM, INC., dba CRUISE.COM'S ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENTS AND DIGITAL MILLENNIUM COPYRIGHT ACT VIOLATIONS, FILED ON MAY 29, 2015; CERTIFICATE OF SERVICE

DEFENDANT CRUISE.COM, INC., DBA CRUISE.COM'S ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENTS AND DIGITAL MILLENNIUM COPYRIGHT ACT VIOLATIONS, FILED ON MAY 29, 2015

Defendant Cruise.com, Inc., dba Cruise.com ("Cruise.com") answers Plaintiff Vincent Khoury Tylor's ("Plaintiff") Complaint for Copyright Infringement and Digital Millennium Copyright Act Violations, filed on May 31, 2013 ("Complaint"), as follows:

PARTIES

1. In response to paragraphs 1 and 3 of the Complaint, Cruise.com is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis the allegations are denied.

2. Cruise.com admits the allegations in paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. In response to paragraph 4 of the Complaint, Cruise.com admits that Plaintiffs allege violations of 17 U.S.C. §§ 101 *et seq.* and 17 U.S. C. §1202. With respect to the remaining allegations in paragraph 4, they are legal conclusions to which Cruise.com is not required to respond.

4. In response to paragraph 5 of the Complaint, Cruise.com admits that the court has subject matter jurisdiction under 28 U.S.C. § 1331 and § 1338(a),

but affirmatively alleges that the court lacks personal jurisdiction over Cruise.com. Cruise.com does not own property in Hawaii, has no physical presence in Hawaii, and has no employees in Hawaii. It does not advertise on television, radio, or in newspapers in Hawaii. Cruise.com was incorporated in Delaware and its principal place of business is in Dania Beach, Florida. The acts alleged in the Complaint involved Florida employees of Cruise.com and actions that allegedly occurred in Florida. Hawaii residents comprised only .002% of Cruise.com's bookings in 2015 and an even smaller percentage in 2014.

5. In response to paragraph 6 of the Complaint, Cruise.com denies that venue is proper in this district. Cruise.com does not own property in Hawaii, has no physical presence in Hawaii, and has no employees in Hawaii. It does not advertise on television, radio, or in newspapers in Hawaii. Cruise.com was incorporated in Delaware and its principal place of business is in Dania Beach, Florida. The acts alleged in the Complaint involved Florida employees of Cruise.com and actions that allegedly occurred in Florida. The only witness Cruise.com is aware of who lives in Hawaii is Plaintiff. Hawaii residents comprised only .002% of Cruise.com's bookings in 2015 and an even smaller percentage in 2014.

FACTUAL ALLEGATIONS

6. In response to paragraph 7 of the Complaint, Cruise.com admits that it manages a commercial website, at http://www.cruise.com/, where customers can view information and make travel arrangements. The statements in the second sentence of paragraph 7 are vague and ambiguous and Cruiseline.com is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis the allegations are denied.

7. Cruise.com admits the allegations in paragraph 8 of the Complaint.

8. In response to paragraph 9 of the Complaint, Cruise.com admits that it manages and controls a commercial web page on Facebook.com, at https://www.facebook.com/cruisediscounts, and that the purpose of the Facebook page is to share travel information and encourage cruise travel. Cruise.com further admits that there are hyperlinks between the Facebook page and Cruise.com. However, the Facebook page contains hundreds of posts that cover many different cruise-related subjects, and on that basis Cruise.com denies the remaining characterizations of the Facebook page in this paragraph.

9. In response to paragraph 10 of the Complaint, Cruise.com admits that it manages and controls a commercial web page on Pinterest.com, at https://www.pinterest.com/cruisecom/, and that the purpose of the Pinterest page is

to share travel information and encourage cruise travel. Pinterest functions by allowing users to link to (or "pin") pictures and articles from third-party websites, and to aggregate these links in a single, online location (here, https://www.pinterest.com/cruisecom/). To the extent third-party content is shared by Cruise.com on its Pinterest page, the shared content consists of links to the originating website together with the source of the information (as is the case with all Pinterest sites). As a result, Cruise.com disputes that its Pinterest page was the source of infringing activity. Cruise.com admits that there are hyperlinks between the Pinterest page and Cruise.com. However, the Pinterest page contains many other posts that cover many different cruise-related subjects, and on that basis Cruise.com denies the remaining characterizations of the Pinterest page in this paragraph.

10. In response to paragraph 11 of the Complaint, Cruise.com admits that it manages and controls a commercial web page on Plus.Google.com (Google+"), at https://plus.google.com/+cruisecom/, and the purpose of the Google+ page is to share travel information and encourage cruise travel. Cruise.com further admits that there are hyperlinks between the Google+ page and Cruise.com. However, the Google+ page contains many other posts that cover many different cruise-related subjects, and on that basis Cruise.com denies the remaining characterizations of the Google+ page in this paragraph.

11. In response to paragraph 12, Cruise.com states that it does not own property in Hawaii, has no physical presence in Hawaii, and has no employees in Hawaii. It does not advertise on television, radio, or in newspapers in Hawaii. Cruise.com was incorporated in Delaware and its principal place of business is in Dania Beach, Florida. The acts alleged in the Complaint involved Florida employees of Cruise.com and actions that allegedly occurred in Florida. Hawaii residents comprised only .002% of Cruise.com's bookings in 2015 and an even smaller percentage in 2014. Cruise.com is not aware of any contracts with businesses that have headquarters in Hawaii. Cruise.com denies the remaining allegations of paragraph 12.

12. In response to paragraphs 13–17, 20–21 and 23–25 of the Complaint, Cruise.com is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis the allegations are denied. Cruise.com denies that its conduct was willful copyright infringement and denies that it willfully contributed to the improper use of Plaintiff's images by others.

13. In response to paragraph 18 of the Complaint, Cruise.com admits that an email was sent to "customersupport@cruise.com" on November 27, 2012 by "Larry@Zernerlaw.com" with an address in Los Angeles. The email stated that three of Mr. Tylor's images were on the cruise.com website and provided a hyperlink to the English language website. The email stated that the

use was without authorization and requested payment of $10,000. Cruise.com removed the three images from its website and communicated that information to Mr. Zerner via a letter from its Florida counsel. Mr. Zerner sent an email on December 10, 2012 stating that if the payment was not made by December 15, the offer would be withdrawn. Cruise.com did not make the requested payment. Upon information and belief, neither Mr. Zerner nor anyone else representing Plaintiff ever objected or followed up on these issues or communicated with Cruise.com until this lawsuit was filed on May 29, 2015.

14. In response to paragraph 19 of the Complaint, the email from "Larry@Zernerlaw.com to "customersupport@cruise.com" did not state that Mr. Tylor's Kaanapali Beach photograph appeared on Cruise.com's Spanish language website, blog or Facebook page. Cruise.com has removed all of Mr. Tylor's photographs from its website, blog, and social media and denies that its conduct was willful copyright infringement.

15. Cruise.com denies the allegations in paragraph 22 of the Complaint.

16. In response to paragraph 26 of the Complaint, Cruise.com admits that, upon information and belief, neither Mr. Zerner nor anyone else representing Plaintiff objected or followed up on the issues discussed in the 2012

emails or communicated with Cruise.com until this lawsuit was filed on May 29, 2015. *See* paragraphs 13 and 14 above.

FIRST CAUSE OF ACTION:
COPYRIGHT INFRINGEMENT

17. In response to paragraph 27 the Complaint, Cruise.com repeats and realleges its answers to paragraphs 1-26.

18. In response to paragraph 28 of the Complaint, Cruise.com is without knowledge or information sufficient to form a belief as to the truth of the allegations, and on that basis the allegations are denied .

19. Cruise.com denies the allegations of paragraphs 29–39 of the Complaint.

SECOND CAUSE OF ACTION:
DIGITAL MILLENNIUM COPYRIGHT ACT VIOLATIONS

20. In response to paragraph 40 the Complaint, Cruise.com repeats and realleges its answers to paragraphs 1-39.

21. Cruise.com denies the allegations of paragraphs 41 – 46 of the Complaint.

22. Cruise.com denies all allegations of the Complaint not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Cruise.com upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Cruise.com intends to rely upon the defense that this Court lacks personal jurisdiction over Cruise.com. Cruise.com does not own property in Hawaii, has no physical presence in Hawaii, and has no employees in Hawaii. It does not advertise on television, radio, or in newspapers in Hawaii. Cruise.com was incorporated in Delaware and its principal place of business is in Dania Beach, Florida. The acts alleged in the Complaint involved Florida employees of Cruise.com and actions that allegedly occurred in Florida. Hawaii residents comprised only .002% of Cruise.com's bookings in 2015 and an even smaller percentage in 2014.

THIRD AFFIRMATIVE DEFENSE

Cruise.com will rely on the defense of improper venue. Cruise.com does not own property in Hawaii, has no physical presence in Hawaii, and has no employees in Hawaii. It does not advertise on television, radio, or in newspapers in Hawaii. Cruise.com was incorporated in Delaware and its principal place of business is in Dania Beach, Florida. The acts alleged in the Complaint involved Florida employees of Cruise.com and actions that allegedly occurred in Florida.

The only witness Cruise.com is aware of who lives in Hawaii is Plaintiff. Hawaii residents comprised only .002% of Cruise.com's bookings in 2015 and an even smaller percentage in 2014.

FOURTH AFFIRMATIVE DEFENSE

To the extent that there was any copyright infringement or violation of 17 U.S.C. § 1202, such infringement or violation was innocent and done without knowledge.

FIFTH AFFIRMATIVE DEFENSE

If Plaintiff suffered any of the injuries and/or damages as alleged in the Complaint, such injuries and/or damages were caused in whole or in part or were contributed to by the negligence or fault of Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff is barred from maintaining this action against Cruise.com by reason of his own wrongful conduct, which caused the injuries alleged in the Complaint to the extent any were actually suffered by Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff is barred from maintaining this action against Cruise.com because of the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff's injuries and/or damages, if any, were proximately caused by acts or omissions of Plaintiff and/or his affiliates, or others outside the control of Cruise.com, and not by the acts or omissions of Cruise.com.

NINTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff's claims are subject to a defense of fair use.

TENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff's claims are subject to a defense of *de minimus* infringement.

ELEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff abandoned any copyright inhering in the subject photographs and/or the subject photographs are in the public domain.

TWELFTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff is barred from maintaining this action against Cruise.com because of the doctrine of misuse of copyright.

THIRTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff's purported copyrights are unenforceable because of waiver and estoppel or other acts or conduct of Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

Upon information and believe, Plaintiff's claims for damages and attorneys' fees are barred by the commencement rule under 17 U.S.C. § 412.

FIFTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff's claims are barred because Plaintiff consented to the use of Plaintiff's works.

SIXTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff failed to mitigate his damages and accordingly may be barred, in whole or in part, from recovery herein.

SEVENTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff's claims are barred, in whole or in part, by the doctrine of laches and/or the applicable statute of limitations.

RESERVATION OF ADDITIONAL AFFIRMATIVE DEFENSES

Cruise.com reserves the right to assert additional defenses that may be revealed through investigation, discovery, and or trial. In particular, Cruise.com notes that: (1) the Complaint is couched in conclusory terms, and therefore Cruise.com cannot fully anticipate all affirmative defenses that may be available to it in this action; and (2) Cruise.com is still in the process of investigating Plaintiff's claims and Cruise.com's defenses. Cruise.com therefore reserves the right to assert additional defenses if and when it discovers such affirmative defenses are applicable.

WHEREFORE, Cruise.com requests that:

A. The Complaint be dismissed with prejudice;

B. Cruise.com be awarded its costs, expenses, and attorneys' fees; and

C. Cruise.com have such other and further relief as this Court deems just and equitable.

DATED: Honolulu, Hawaii, August 10, 2015.

/s/ Patricia M. NaPier
PATRICIA M. NAPIER
RANDALL C. WHATTOFF

Attorneys for Defendant
CRUISE.COM, INC., dba CRUISE.COM

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FOR THE DISTRICT OF HAWAII

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on the date noted below:

Served Electronically through CM/ECF

J. Stephen Street, Esq. 134 Maono Place Honolulu, Hawaiʽi 96821 and Dane Anderson, Esq. P.O. Box #1621 Honolulu, Hawai‘i 96806	jsstreet@ip-law-hawaii.com dane@andersonlawhawaii.com

Attorneys for Plaintiff

DATED: Honolulu, Hawaii, August 10, 2015.

/s/ Patricia M. NaPier

PATRICIA M. NAPIER
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CRUISE.COM, INC., dba CRUISE.COM